1706

SUPREME COURT OF THE UNITED STATES.

No. 172.

THE UNITED STATES, APPELLANT,

vs.

JUAN PEREZ PACHECO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the Proceedings in case No. 37—Juan Perez Pacheco, claimant, vs. the United States, defendant—for the place named San Luis Gonzaga.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twelfth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Juan Perez Pacheco, for the place named "San Luis Gonzaga," was presented, and ordered to be filed and docketed with No. 37, and is as follows, to wit:

(Vide page 4 of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *May* 13*th*, 1852.

In case No. 37, Juan Perez Pacheco, the deposition of David Spence, a witness in behalf of the claimant, taken before the commissioner, James Wilson, was filed.

(Vide page 8 of this transcript.)

SAN FRANCISCO, *December* 29, 1853.

In the same case, the deposition of José Abrego, a witness in behalf of the claimant, taken before the commissioner, Henry J. Thornton, with document marked H. J. T., No. 1, annexed thereto, was filed.

(Vide page 15 of this transcript.)

SAN FRANCISCO, *March* 17, 1853.

In the same case, the deposition of W. A. Richardson, a witness in behalf of the claimant, taken before Commissioner H. J. Thornton, with document marked H. J. T., Nos. 1 and 2, annexed thereto, was filed.

(Vide page 17 of this transcript.)

SAN FRANCISCO, *Aug.* 10*th*, 1853.

On motion of the United States law agent, case No. 37 was ordered to be placed on the trial docket.

Case No. 37 called. The counsel for the claimant read the evidence; answered by the United States law agent; submitted and taken under advisement.

SAN FRANCISCO, *Oct.* 18*th*, 1853.

In the same case, Commissioner Thompson Campbell delivered the opinion of the board rejecting the claim.

(Vide page 46 of this transcript.)

Petition.

To the honorable the Commissioners for settling private land claims in California.

The petition of Juan Perez Pacheco, a resident of the county of Monterey and State of California, respectfully showeth:

That on the 26th of September, 1843, J. Maria Mejia, then captain of the second company of the permanent battalion of California, presented a petition, on behalf of himself and of your petitioner, to Micheltorrena, then military commander and governor, asking for a grant of a tract of land in the northwestern part of the county of Mariposa, containing eleven sitios de ganado mayor, and known as San Luis Gonzaga; that it was set forth, in said petition, that the Government had previously granted the same lands to one Francisco Rivera, but that for two years the said Rivera had not occupied the same, and that said Mejia therefore claimed to denounce the said Revera and his non-performance of the conditions of his said grant of said land; that said petition was referred, by said Governor Micheltorrena, to the prefect of the first department of Monterey, for information; that said prefect, on the 3rd of October, 1843, reported, that said lands were waste, and did not belong to any individual, village or corporation, and that there was no obstacle to a grant of said land, according to the prayer of said petition; that thereupon the said Micheltorena referred said petition to Manuel Jimeno, then secretary of State, who reported that said Revera had obtained a grant of the said land in 1841, but that the condition had not been performed, and that the right of said Revera to said land had become liable to be denounced, and that the prayer of the petitioner shall be granted; that on the fourth of November the said governor made a decree, declaring, as said land had so long time been unoccupied by said Rivera, and as nothing had been heard of him, and as the petitioners had the means of stocking said land, and thereby effecting a defence against the hostile Indians, as well as affording the means of civilizing them, he pronounced the said Mejia and said Pacheco the owners of the said land, and directed the proper documents to issue; that on the same day a grant was made to said Mejia and Pacheco, in compliance with all the formalities of the law; that on the 7th day of November the said Mejia executed a conveyance of his half of said land to your petitioner; that said petitioner has been in the possession of said land from said day to this date, exercising complete and

acknowledged ownership thereof; that in the month of June, 1851, your petitioners, for greater safety, for a valuable consideration, obtained from the said Rivera a conveyance and release of all his right, title and interest in said land, which conveyance is ready to be offered in evidence; that the boundaries of said land are described in said *land* as follows: by the rancho of Don Francisco Pacheco, by the bath called Padre Arroyo's bath, by the river, and by the wild Indian country. And your petitioner further states, that the originals of said petitions, references, reports, and decrees and grant, together with a map of the premises, are now on file among the archives of California, now in possession of the surveyor general of the United States for the State of California, and that duly certified copies of said documents are herewith exhibited, and prayed to be taken as a part of this petition; and that said original grant, and the conveyance from said Mejia to him, are in the possession of your petitioner, and ready to be offered in evidence whenever required.

Your petitioner therefore claims to be the owner of said land above described, and respectfully asks that your honors might confirm his title and claim thereto.

CLARKE, TAYLOR & BEEKH,
Attorneys.

Filed in office, Feb'y 12th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of David Spence, together with a copy of the original Grant and Translation.

BOARD OF COMMISSIONERS
To ascertain and settle private Land claims in California.

MAY 13*th*, 1852.

On this day came before me, James Wilson, one of said commissioners, *David Spence*, a witness offered by Juan Perez Pacheco, petition in case No. 37, who, being duly sworn, gave the following testimony. G. W. Cooley, esq'r, law agent of U. States, being duly notified, was present, and did not object.

No. 37.—Claim of Juan Perez Pacheco.

Question 1, by claimant. Look at the original document, now shown you, written in Spanish, and purporting to be a grant of the land now claimed from Micheltorrena to claimant, one José Maria Mejia. State if you have compared it with exhibit No. 1, now annexed to your deposition and placed on file in this cause, purporting to be a copy of said grant and a translation thereof. State if said exhibit contains a correct copy of said original document and a correct translation thereof, and whether you know any of the signatures to said original document, and which of them, and whether the same are genuine.

Deponent's Answer.

I have examined the original document now shown me, and have compared it with Exhibit 1, which is hereto annexed. I find said Exhibit 1 to be a true copy of said original document, and the translation of the same to be substantially correct. I know the signatures of Manl. Micheltoreno and Manuel Jimeno, having often seen them write. Their signatures to the document now shown me are their genuine signatures.

D. SPENCE.

May 13th, 1852.

Subscribed and sworn to before me.

JAMES WILSON, *Commissioner.*

Filed in office, May 13, 1852.

GEO. FISHER, *Sec'y.*

[Sello, seal.] MICHELTORENO,
MANUEL CASTANARES.

Manuel Micheltoreno, general de brigada del ejircito Mejicana, ayundante general de la plana, mayor del mismo, goberador, comandante general é inspector del departamento de los Californias.

Por cuanto el Capitan Dn. José Maria Mejicana y Dn. Juan Perez Pacheco, han pretendido para sus beneficios personales, el paraje conocido con el nombre de San Luis Gonzaga, colindante con el rancho de Dn. Fran'co Pacheco, con el zaño que llaman del Padre Arroyo, con el Zio de la Gentilidad, practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas a nombre de la nacion Mejicana, ne venido en conceder la el terreno mencionado, declarandoles la propiedad de el por las presentes letras, sujetandos a la aprobaciòn de la ex'ma junta departmental, y bajo las condiciones siguientes:

1a. Podran cercarlo sin perjudicar las travesias, caminos y servidumbres, lo disfrutaràn libro y esclusivamente, destinandolo al uso ó cultivo que mas les acomode, peró dentro de un año fabricaran, causa y estará habitáda.

2a. Solicitara del juez respectivo, que les de la posecion juridica en vertud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran à mas algunos arboles utiles, ó silvestres de alguna utilidad.

3a. El terreno de que se les hace donaciones de once sitios de ganado mayor, el juez que diere la posesion la hara medio conforme à ordenanza el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraveniere à estas condiciones perderan su derecho al terreno y sera denunciable por otro.

En consecuencia mando que serviendoles de titulo el presente y

teniendose por firme y valedero se tome razon de el cual libro respectivo, y se entreque à los interesados pa. su resguardo y demas fines.

Dado en Monterrey, á cuatro de Noviembre, de mil ochocientos cuarenta y tres. MAN'L MICHELT'O·
MAN'L JIMENO, *S'rio.*

Quedo tomada razon de este cocesion en el libro respectivo, á f's 2d.
(Firmando) JIMENO.

Manuel Micheltoreno, brigadier general in the Mexican army, adjutant general of the Plaza, major of the same, governor, commander general, and inspector of the department of both Californias.

Whereas the Captain Dña. José Maria Mejia and Dn. Juan Perez Pacheco have solicited for their personal benefit the location known by the name of San Luis Gonzaga, bordering on the rancho of Dn. Franco Perez Pacheco, on the bathing-place called Padre Arroyo, on the Rio and la Gentilidad, after having previously taken the necessary action and made the necessary investigations according to the requirements of the laws and regulations, in exercise of the powers vested in me, in the name of the Mexican nation, I have concluded to grant them the mentioned land, declaring them owners of it by the present letters patent, subject to the approbation of the E. departmental assembly, and under the following conditions:

1st. They may fence it without prejudicing the crossings, roads, and servitudes; they will enjoy it freely and exclusively, appropriating to the use or culture that best may suit them, but within one year they shall build a house to be inhabited.

2nd. They shall solicit of the respective judge to give them judicial possession, in virtue of this document, by whom the boundaries are to be fixed, on the extremities of which they will put, besides landmarks, some fruit trees, or wild ones of some usefulness.

3rd. The land granted them is eleven square leagues (sitios de ganado mayor). The judge who shall give the possession will cause it measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If they should violate these conditions they will lose their right to the land, and may be denounced by any other party.

Consequently I order that these presents serving them as a title-deed, and being held as firm and valid, it be entered in the respective book, and delivered to the parties interested for their security and other purposes.

Given in Monterey on the 4th of November, 1843.

(Signed) MAN'L MICHELTORENA.
(Signed) MAN'L JIMENO, *Secretary.*

This title-deed is entered in the respective book, fol. 2.
(Signed) JIMENO.

Filed in office, May 13th, 1852. GEO. FISHER, *Sec'y.*

Deposition of José Abrego.

SAN FRANCISCO, *Dec'r 30th*, 1852.

On this day, before Commissioner Harry J. Thornton, came José Abrego, a witness in behalf of the claimant, Juan Perez Pacheco, petition No. 37, and was duly sworn, his evidence being given in Spanish, and interpreted by the secretary.

The U. S. associate law agent was present.

Questions by Claimant.

Question 1st. What is your name, age, and place of residence?

Answer. My name is José Abrego; my age forty years; my residence California.

Question 2nd. Look at the document now shown you, purporting to be an original conveyance from J. Maria Mejia to D. Juan Perez Pacheco, witnessed by José de Amesti and Salvador Miniras, of the land known as S. Luis Gonzaga, and dated Monterey, 7th November, 1843, which said original document, marked Exhibit 1, is attached to your deposition, and now filed. State if you are acquainted with the handwritings of José Maria Mejia, José de Amesti, and Salvador Almiras; and if so, whether the signatures attached to the said original conveyance are the genuine signatures of said persons respectively.

Answer. I am well acquainted with the handwriting of J. Maria Mejia, José de Amesti, and Salvador Miniras, having often seen them write. Their signatures to the document shown me are genuine. I was present when the paper was executed, and saw it signed.

U. S. law agent present.

JOSE ABREGO.

Shown to and subscribed before me, this 30th December, 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office, Dec. 30th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of William A. Richardson.

SAN FRANCISCO, *March 17th*, 1853.

On this day, before Commissioner H. J. Thornton, came William A. Richardson, a witness in behalf of the claimant, Juan Perez Pacheco, and was duly sworn, his evidence being given in English.

Questions by Claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is William A. Richardson; my age fifty-eight years; and I reside on my rancho of Sancelito, in Marino county.

Question 2d. Look at the document now shown you, purporting to be a grant of the land known by the name of San Luis Gonzaga,

from Manuel Micheltoreno to José Maria Mejia and D. Juan Perez Pacheco; state what you know respecting the genuineness of the signatures to said document?

Ans. I am well acquainted with the handwritings of Manuel Micheltoreno and Manuel Jimeno, having often seen them write; their signatures wherever they appear upon said document are genuine.

United States law agent present.

WILLIAM A. RICHARDSON.

Sworn to and acknowledged before me, this 17th of March, 1853.

HARRY J. THORNTON,
Comm'r, &c.

Filed in office, March 17th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of José Abrego.

SAN FRANCISCO, *March 23d*, 1853.

On this day, before Commissioner Hiland Hall, came José Abrego, a witness in behalf of the claimant, Juan Perez Pacheco, petition No. 37, and was duly sworn, his evidence being interpreted by the secretary.

The United States associate law agent was present.

Questions by Claimant.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is José Abrego; my age forty years; and I reside in Monterey.

Question 2d. State what you know in regard to the possession and occupancy of the land petitioned for by Juan Pacheco, called Drestimtea.

Ans. I have known the land petitioned for during the last eight years; it has been during that time in the possession and occupation of the petitioner; he has used it principally for grazing purposes, having constructed and occupied several small houses by himself and those in his employment; he has also constructed various large corrals, for the herding of cattle, and has cultivated portions of said land during all that period.

JOSE ABREGO.

Sworn and subscribed before me,

HILAND HALL, *Comm'r, &c.*

Filed in office, March 23d, 1853.

GEO. FISHER, *Sec'y.*

[1 S. D. K.]

Expediente.

Expediente promovido por los ciudadanos José Maria Mejia y Juan Perez Pacheco, en solicitud del parage conocido con el nombre de San Luis Gonzaga.—315.

[2 S. D. K.]

Sello Cuarto, Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENO. MANUEL CASTANARES.

Ex'mo S'or:

J. Maria Mejia, capitan de la 2d comp'a bn., perm'te de cal-
[ ] fante, V. E., con el decho respeto asi presente que teniendo con numero de bienes bastante para ocupar un terreno valdio conforme á la ley de colonisacion; solisita el de Sn. Luis Gonzaga, ql. se alla situado en la falda á las lomas ql. entran á el Ball de G. Joaquin, con el mismo numero de sitios ql. le pertenece, asi á D. Franco. Reviero, a que en se lo tenia concedido el govierno del departamento pero como en dos años no lo alla ocupado este individuo esegun esta prevenido no poderlo denunciar afreciendo presentar el diseño tan luego como pueda reconocer el terreno.

Por tanto, suplico prosea en mi favor en ql. recivere merced y gracia.

Monterey, Sept're 26, de 1843.

Ex'mo S'or,

J. MARIA MEJIA.

MONTEREY, *Sept.* 30, *de* 1843.

Inf. el S. prefecto del 1a. distrito tomando los y necesito.

MICHEL'A.

[3 S. D. K.]

A V. E.

Ex'mo S'or Gob'r:

Constandole á esta prefectura, que el terreno que se presente en esta inst'a es valdio y no pertenese á particular, ni corporacion, alguno no en cuentra en barayo, en que se el concede, al solicitante el misma parage si fuese del superior agrado de V. E.

Monterey, O'bre 3, de 1843.

JOSE R. ESTRADA.

[4 S. D. K.]

MONTEREY, *Oct'br* 3, *de* 1843.

Servase informar el S. s'rio del despacho, de este Gob'r Michel'o.

Ex'mo S'or Gobernador:

El terreno que solicita, el capitan Don José Maria Mejia, esta consedido á D. Franco Rivero, desde el año de 1841, pero como en el titulo que se le dio, cita la condicion, que dentro de un año fabricara casa, y estara ocupada y de contraveniese á ella perdera esa derecho al terreno, y sera denunciable por otro, por esto entiendo hallar se el S'or Rivero, en el caso de habor perdido esa derecho, y la solicitud del S. Mejia, esta en estado de prover se de conformidad, agregandose al expediente, del terreno nombrado San Luis Gonzaga, esto es si á V. E. le por ese conveniento.

Monterey, 3 de O'bre, de 1843.

MAN'L JIMENO.

MONTEREY, *O're* 3, *de* 1843.

Conforme á lo informado anteriormente espidarse el titulo.

MICHEL'O.

[5 S. D. K.]

MONTEREY, 4 *de Noviembre, de* 1843.

Vista peticion con que au principio este espediente, el tiempo que hace, que D. Franco Rivero, no ocupa el terreno, ni tener noticia des paradero de esta persona, y presentarse á ver personas que tienen, vast ante posibilidad, para fomentar el terreno, y ocuparlo hara que serva, de resguardo para que los Gentiles, se recliesan por esos lugares, con todo lo demas que se tuvo presente, y de ver convino de conformidad con las leyes, y reglementos de la materia declaro, á D'n José Maria Mejia, y á D'n Juan Perez Pacheco, dueños en propiedad del terreno nombrado San Luis Gonzaga, colindante en el rancho de D'n Franco Perez de Pacheco, con el Baño, que llaman del padre Arroyo, con el Rio y la Gentilidad, gebrese el correspond'te despacho, tomese razon en el libra respectivo, y dirijase este esped'te á la E. Junta, el E. S. Gob'r, asi lo mando, decrete y firmo.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES *for California.*

I, Samuel D. King, Surveyor General of the United States for the State of California, and, as such, now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five inclusive, and each of which is

verified by my initials, exhibit true and accurate copies of certain documents now on file, and forming part of the said archives in my office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this eleventh day of February, A. D. 1852.

[ ]

SAMUEL D. KING,
Surveyor Gen'l, Cal.

Filed in office, February 12th, 1852.

GEO. FISHER, *Sec'y.*

"C."—*Translation.*

Expediente moved and forwarded by the Citizens José Maria Mejia and Juan Perez Pacheco, soliciting the grant of that location known under designation of "San Luis Gonzaga."—315.

Most Excellent Sir:

J. M. Mejia, captain of the second company of the permanent battalion of California, exposeth and declareth before Y. Ex. with due respect:

That inasmuch as he owns a number of "bienes"—say cattle—sufficient and enabling him to occupy a tract of vacant land in conformity to the requisites specified by the law on colonization, he requests to obtain the grant of that designated as the San Luis Gonzaga, lying at the base of those hillocks which enter or penetrate into the valley of San Joaquin, with the same number of sitios which belonged to Dn. Francisco Rivero, to whom the government of the department had granted it; but inasmuch as during a period of two years the said individual has not occupied it, as it is ordered and required in such cases, he believes he can denounce it, and he offers also to exhibit a sketch as soon as he may make a survey of the lands. Therefore, I beg of Y. E. that you may provide favorably towards me, and thereby will be a receiver of mercy and grace.

Monterey, September the 26th, 1843.

Most Excellent Sir.

(Signed) J. MARIA MEJIA.

MONTEREY, *Sept'r the 30th*, 1843.

Let the Sir Prefect of the 1st district report on the matter, he himself being empowered to request any necessary report from other officials.

(Signed) MICHEL'A.

To His Ex'cy the Sir Governor:

The prefectship being well aware of the fact, that the tract of land, the grant of which is requested in this memorial, is vacant and does not belong to any corporation or private individuals, the prefectship does

not know of any obstacle to the grant to the memorialist of the said land, if it should so please Y. Excellency.

Monterey, Oct. 3d, 1843.

(Signed) JOSE R. ESTRADA.

MONTEREY, *Oct. 3d*, 1843.

The Señor Secretary of State of this Government is hereby officially requested to report on the subject.

(Signed) MICHELTORENA.

Most Excellent Sir Governor:

The tract of land which the Captain Dn. José M. Mejia requests to obtain, has been granted to Don Francisco Rivero from the year 1841; but inasmuch as on the title-deed given to him is specified as a condition, that within a year he is to build a house, which is to be dwelt in, and that in case of failure to fulfil said condition he is to lose his right to the land, and is to become thereby liable to be denounced by any other party; I, therefore, am of opinion and understand that Sr. Rivero finds himself in the predicament of loss of his right, and the memorial of Sr. Mejia is susceptible of being complied with, annexing it to the record of proceedings of the tract of land designated as San Luis Gonzaga; this is to say, provided Y. E. may find it expedient.

Monterey, October 3d, 1843.

(Signed) MANUEL JIMENO.

MONTEREY, *October 3d*, 1843.

Let the title be issued in conformity to the preceding report.

(Signed) MICHELTORENA.

MONTEREY, *Nov'br 4th*, 1843.

After having examined the petition heading this record of proceedings, and in consideration of the long time elapsed without the land being occupied by Dn. Francisco Rivero, and without any news as to the whereabouts of said individual; and, whereas, parties have appeared before me who enjoy the means to improve the land occupying it, so as to render it a kind of defence against the heathen Indians, and as a help co-operating towards their reduction on and about the place; and after consideration of all and every thing to the purpose, in conformity to the laws and regulations on the subject, I declare Dn. José Maria Mejia and Dn. Juan Perez Pacheco owners in fee of that tract of land designated as San Luis Gonzaga, bordering on the rancho of Dn. Francisco Perez Pacheco, with the basin commonly known as del Padre Arroyo, with the river, and with the land the heathen Indians abide.

Let the corresponding patent be issued and delivered; let it be entered on the respective book, and let this record of proceedings be addressed to the excellent committee.

The Excel. Sir Governor did thus order, decree, and sign it.

Filed in office Feb'y 12th, 1852. GEO. FISHER, *Sec'y*.

Doc. H. J. T., a'xed to the dep. of Wm. A. Richardson.

Sello Segundo, Cuartro Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos quarenta y tres.

MICHELTORENO. MANUEL CASTANARES.

[ ]

Manuel Micheltoreno, General de Brigada des Ejercito Mejicano, Ayundante General de la Plana mayor del mismo, Gobernador, Comandante General è Inspector del departamento de los Californias:

Por cuanto el Capitan Dn. José Maria Mejia y Dn. Juan Perez Pacheco, han pretendido para sus beneficios personales, el parage conocido con el nombre de San Luis Gonzaga, colindante con el Baño que llaman del Padre Arroyo, con el Rio y la Gentilidad; practicadas previamente las diligencias y averiguaciones consernientes, segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas à nombre de la nacion Mejicana, he venido en concederles el terreno mencionado, declarandoles la propiedad à de el por las presentes libros, sujetandose à la aprobacion de la ex'ma junta departamental, y bajo las condiciones siguientes:

1a. Podran sercarlo sin perjudicar las travesias, caminos, y servidumbres; lo disfrutaran libre y esclusivamiente destinando al uso ó cultivo, que mas la acomode para dentro de un año fabricara casa y estara habitada.

2a. Solicitaran del juez respectivo que les de la prosecion juridica en virtud de este despacho, por el cual se demarcaran las linderos en cuyos limites pondran à mas de sus mojoneras, algunos arboles frutales, ó silvestres de alguna utilidad.

3a. El terreno de que se les hace donacion es de once sitios de ganado mayor. El juez que diese la posecion lo hora medir conforme à ordenanza, que dando el sobrante à la nacion, para los usos mas convenientes.

4a. Si contraviniese à estas condiciones perderan su derecho al terreno y sera denunciable por otro. En consecuencia mando que sirviendole de titulo el presente y teniendose por firme, y valedero se tome razon de el en el libro respectivo, y se entregue à los interesados pa. su resguardo y demas fines. Dado en Monterey, à cuatro de Noviembre, de mil ochocientos cuarenta y tres.

MAN'L MICHELT'O.
MANUEL JIMENO, *S'rio.*

Queda tomada razon de esta consecion en el libro respectivo, á f'a 2d.

JIMENO.

Filed in office, March 17th, 1852.

GEO. FISHER, *Sec'y.*

Doc. H. J. T., No. 7, annexed to the depo. of José Abrego, taken before Com. Harry J. Thornton.

Sello Segundo, Cuartos Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENO. MANUEL CASTANARES.

[ ]

Por este cons'tl q'l la parte q'l me pertenece, en compania con D. Juan Perez Pacheco, del terreno nombrado S. Luis Gonzaga, lo sedo absolutamente é dicho señor, sin q'l me considero con derecho ninguno à ella; cuya posecion en todo tiempo es valedero y no me considero con mingun derecho à reclamo, renunciando las leyes de mi favor las de la general esclucion, y dandole a este documento la mismo fuerza y action q'l si fuera un instrumento judicial. Dado en Monterey, à siete de Novm'bre, de mil ochocientos cuarenta y tres.

J. MARIA MEJIA,
JOSE DI ARNESTI.

Jq'R SALVADOR MINARES.

Filed in office, Dec. 9th, 1852.

GEO. FISHER, *Sec'y.*

Conveyance.

Sello Segundo [Ano de mil ochocientos cuarenta y mil ochocientos y cincuatro y uno.] Cuartro Pesos.

En la ciudad de Mejico, a veinte de Febrero de mil ochocientos cincuenta y uno; anté mi, el escribano publico, y testigos Don Francisco José Rivero de está vecindad, mayor de veinté cenco años y al cual doy fé, conozco dijo: Que en fines de Deciembre del año de mil ochocientos cuarenta y uno, el Señor Don Juan Bautista Alvarado desen propiedad al esponienté, el rancho conocido por de San Luis Gonzaga cito en la Alta California, compuesto de once sitios de ganado mayor, lo cual debe constar en la secretaria desgob'no de aquella parti que fuè de la republica en el libro respectivo y año referido; que conveniendole vender elictácionado rancho y debiendose celebrar en contrato caso de realisurse en la propria California, por el presenté y en la mas bastáno forma que haya lugar en derecho, dò el mencionado Señor Rivero tódo su poder, bastanto el que por derecho si requiera mas pueda, y deba valer, á Don José Abrego veano de Monterey, en la Alta California, para que en represantacion del otorganté sus derechos y acciones, venda el repetido rancho, percibiento su imparle, y otro gardo la escritivia correspondiente de enagenacion, declarando en ella á favor del comprador, haller se dicha tiena libra de todo gramen è hipoteca por parto del esponien'to, y obligandolo en el instrumento que se otrique á la encecion y sancamiento de dicho ventá y consiguando

en la mencionada escriture tadas las scansulas, y requisitos acostumbrados en semegantes casos, teniendo por espresas aqui cuantás fueren conducentes conincidencias, dependencias anexidades, conexidades, libre franca y general administracion, y facultad de porar enjuiciar y sustituez, revocartos substitutos, y nombrar otros de nuevo que á todos releva en forma ya la jurada formez, a y cumplimientó del espuesto obliga el otorgante sus bienes presentes, y futuras dá poder à los señores jueces, justicias y trubrinales de la nacion, para que á lo dicho lo competan y apremien, como si fuese por sentencia pasada en autoridad de casa juzgada, y consentidad que por tal lo recibo renuncia su fuero de domicilio y vecindad, ley esde su favor de fenza con la que prohibo su general renunciacion. Y lo firmo siendo testigos, Don Juan Molino, Don Casimiro, Fernandez y Don Manuel Jimenes, de citio vecindad, doy fé.

FRANCISCO JOSE RIVERO,
DANIEL MENDEZ,
Escribano national y publico.

Sa case de limatriz que obra en el protocclo de mi cargo á que me cenito. Y va en el presente pliego del sello segundo correjido bienio corriente siendo testigos à su casa, y correccion los instrumentales Mejico, Febrero veinte, de mil ochocientos cincuenta y uno, doy fée.

DANIEL MENDEZ,
Escribano N. y Po.

No. 1072.

CONSULATE OF THE U. S. OF AMERICA,
MEXICO, *February 22nd*, 1851.

I, the undersigned, consul of the United States of America for the city of Mexico, hereby certify, that the signature of Daniel Mendez, subscribed to the preceding document, is the proper handwriting of said person,—the same as used by him in all his official acts,—who is well known to me, and was, at the time of subscribing the same, a duly authorized notary public of this city, and that all his official acts are entitled to full faith and credit as such.

In testimony whereof I have hereunto set my hand and affixed the consular seal, the day and year above written.

JOHN BLACK, *Consul.*

Register F, folio 75, des. 4 ps.

En el puerto de Monterey, en el estado de California, à los suledias, del mes de Junio, de 1851, parecio de presente, ante mi, Preston S. Woodside, registrador del condado de Monterey, Dn. José Monega, vecini de este lugar y dijo: Q'l siendo apoderado, por D. Francisco Rivero, segun consta por el poder, adjunto vende y da en venta solemne à nombre de dicho Francisco Rabero, el derecho y accion que puedar teneo à el rancho de San Luis Gonzaga; q'l se hayar en este condado, el que consta de once sitios de ganado mayor, el cual se le con-

cedio en año de 1841, por el Governador D. Juan B. Alvarado, segun deve constar en los lorchevos del gobierno, à Dn. Francisco Pacheco, vecino de este puerto, en la suma de mil dos cientos pesos; q'l tieno recibidis à su satisfaction declarando; q'l d'ho terreno no ha siar vendido ni enagenado, por parte del mencionada Francisco Ribero, y para su constancia lo firmaron, à presencia de los testigos.

JOSÉ ABREGO.

(Testigo:) M. DE TABOAS,
JAMES STOKES.

STATE OF CALIFORNIA,
County of Monterey.

On this 7th day of June, A. D. 1851, before me, recorder in and for the county aforesaid, personally came José Abrego, to me known to be the same person described in, and who, as grantor thereof, executed the foregoing conveyance, and acknowledged to have executed the same freely, and for the uses and with the power therein expressed.

Given under my hand and official seal the day and year last aforesaid.

P. WOODSIDE,
Recorder of Monterey, Cal.,
By WM. S. JOHN SOUL,
Dep'y Recorder.

Filed in office, March 17th, 1853.

GEO. FISHER, *Sec'y.*

Seal of the Second Class, Four Dollars.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year eighteen hundred and forty-three.

(Signed) MICHELTORENA,
(Signed) MANUEL CASTANARES.

[Custom H. Seal.]

Manuel Michelt'a, brigadier general of the Mexican army, adjutant general of the staff of the same, governor, commandant general and inspector of the department of the Californias.

Whereas, Captain Dn. José Maria Mejia and Don Juan Perez Pacheco have asked, for their personal benefit and that of their families, for the place known by the name of San Luis Gonzaga, bounded by the rancho of Don Francisco Pacheco, by the bath called Padre Arroyos's bath, by the river and the wild Indian country, (Gentilidad;) the necessary steps and investigations having been previously taken and made, in conformity with the requirements of laws and regulations, I have, by virtue of the powers conferred upon me, granted unto them the said land, and declaring unto them the ownership thereof by these

present letters, in the name of the Mexican nation, subject to the approval of the most excellent departmental junta, and under the following conditions:

1st. They may surround it without prejudice to the crossings, roads, and privileges; they shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit them, but within one year they shall build a house, and it must be inhabited.

2nd. They shall request the respective magistrate to give them jurisdical possession in virtue of this title, and he shall designate the boundaries, at the limits whereof they shall, besides placing their landmarks, plant some fruit trees, *of* wild ones of some utility.

3rd. The land whereof donation is made contains eleven square leagues (once sitios de ganado mayor). The magistrate who gives possession shall have it measured according to law, leaving the surplus which may result to the nation for the necessary uses.

4th. If they transgress these conditions they shall forfeit their right to the land, and it may be denounced by another.

I consequently command that these presents serve them for a title, and that holding it to be firm and valid, a record thereof be taken in the respective book, and the original be delivered to the parties interested for their security and further ends.

Given in Monterey, on the 4th of November, eighteen hundred and forty-three.

(Signed) MAN'L MICHELTORENO.
(Signed) MANUEL JIMENO, *Sec'y.*

A record of this grant has been made in the respective book, at folio 2.

(Signed) JIMENO.

I, the undersigned, do hereby certify the foregoing to be a true and faithful translation of its original.

Office of State translator, Monterey, 4th December, 1851. Filed in office.

W. E. HARTNELL,
State Translator.

Opinion by Com'r Thompson Campbell.

JUAN PEREZ PACHECO
vs.
THE UNITED STATES. } "San Luis Gonzaga."

On the 4th day of November, A. D. 1843, the present claimant and one José Maria Mejia obtained from Governor Micheltorena a grant for the place known by the name of "San Luis Gonzaga," which place is described in the grant as follows: "bounded by the ranch of Francisco Pacheco, by the bath called Padre Arroyos bath, by the river and the wild Indian country." The grant is proved to be genuine. It is also satisfactorily proved that said José Maria Mejia executed his deed

of conveyance to Juan Perez Pacheco, the present claimant for his entire interest in the tract of land granted to them jointly. It is further proved by the deposition of José Abrego, taken on the 23rd day of March, 1843, that for the last eight years next preceding the date of this deposition, the land claimed by the claimant had been in his possession and occupation; that said claimant had used the land principally for grazing purposes, and that several small houses had been constructed and occupied by the claimant and others in his employment; and further, that various large corrals had been constructed, and that he had cultivated a portion of the land during all that time. The papers on file show that the same tract of land had been granted to one Francisco Rivera, in the year 1841, and that Mejia and Pacheco denounced the same on the ground that said Rivera had not complied with the conditions of his grant, and alleged in particular that he had not complied with the conditions which required him to build a house within a year. The denouncement was sustained, and the grant to Rivera was declared forfeited for a failure on his part to perform the conditions attached to his grant.

The history of the case forcibly illustrates the views of the Mexican authorities in regard to the necessity of a performance of the conditions of the law, and now especially of the condition which requires the building of a house within the time prescribed by the governor.

The evidence in this case does not show a performance of that condition. The witness states in his deposition that he had known the land for eight years previous to that time; his knowledge of the land commenced about sixteen or seventeen months after the date of the grant to the claimant, and during those eight years some small houses were erected, at what particular time the witness does not state. There is no proof that there was a house built within a year; indeed the evidence all goes to show that no house was constructed until after the witness became acquainted with the place. His whole testimony is general as to time. The onus of proving a substantial compliance with the terms of the grant devolved upon the claimant, and as he had denounced the right of another for a non-performance of the conditions of his grant, he has no right to complain if the same rule should be applied to him which he so strictly applied to others. We are clearly of the opinion that the proof in this case does not show a substantial compliance with the conditions of the law. But if the proof did show a full compliance with all the conditions of his grant, the claim could not be confirmed for want of sufficient description of the premises. The grant is a vague general grant which has never been located by a competent authority, and falls clearly within the rule laid down in the "Honart" case heretofore decided by this board, and to which we now beg leave to refer. We are therefore of the opinion that the claim should be rejected.

Filed in office, Oct. 18, 1853.

GEO. FISHER, *Sec'y.*

Decree.

JUAN PEREZ PACHECO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be, and the same is hereby, denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, Oct. 18, 1853.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COM'RS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-three (51) pages, numbered from 1 to 33, (51,) both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 37, on the docket of the said board, wherein Juan Perez Pacheco is the claimant against the United States for the place known by the name of "San Luis Gonzaga."

In testimony whereof I set my hand, and affix my private seal, (not having a seal of office,) at San Francisco, California, this fifth day of August, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

[G. F.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed August 5th, 1854.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

JUAN PEREZ PACHECO, appel't,
vs.
THE UTITED STATES, app'lee.

Case No. 37.—On appeal from the Board of U. S. Land Commissioners.

Claim for "San Luis Gonzaga," 11 s'q leagues, Tuolumne co.

1716

SIR: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,

CAMPBELL, TAYLOR & BECKH,
Att'ys for Claimant.

San F'co, Dec. 8th, 1854.

TO THE CLERK OF THE U. S. DIS'T COURT
for the Northern district of California.

Endorsed: Filed Dec. 11th, 1854.

JOHN A. MONROE, *Cl'k.*

Petition for Review.

JUAN PEREZ PACHECO
vs.
THE UNITED STATES. } Appeal.

To the Hon'ble Ogden Hoffman, jr., judge of the United States district court for the northern district of California.

The petition of Juan Perez Pacheco, a citizen of California, respectfully represents: That under the provisions of the act of Congress of the 3d March, 1851, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract therein described, called "San Luis Gonzaga," situate in the present counties of Tuolume and Mariposa, in California, under a grant to your petitioner and José Maria Mejia by M. Micheltorena, Governor of California, dated 4th November, 1843, and accompanied it by evidence of his title, and to which, for more full and particular description, he begs leave to refer. That his said claim, being designated as No. 37 on the docket of the said commissioners, was rejected by them on the 18th of October, 1853; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings and decisions of the commissioners in the case was filed in the office of the clerk of the court for that district, on the 5th August, 1854, and on the 11th December, 1854, notice was filed with the said court that your petitioner appealed from such decision.

Your petitioner prays for a re-hearing of the case upon this appeal, that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to recognise, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidences of claim.

And your petitioner will ever pray, &c.

STANLY & KING,
Att'ys for Claimant.

San Francisco, 11th June, 1855.

Received a copy this day, 11th June, '55.

S. W. INGE,
U. S. District Att'y.
Per JOHN A. GODFREY.

Endorsed and filed, June 11th, 1855,

By W. H. CHEVERS,
Dep. Cl'k.

Answer of United States.

JUAN PEREZ PACHECO, app't,
vs.
UNITED STATES, appellee.

In the Dis't Court of the United States for the northern district of California.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellant, and pray that the decision of the Board of Commissioners be affirmed, and that the said title be decreed to be invalid.

A. GLASSEL,
Ass't U. S. Att'y.

Endorsed: "Filed June 11th, 1855.

W. H. CHEVERS,
Deputy Cl'k."

Depositions of Jacinto Rodriguez and Benito Diez.

UNITED STATES DISTRICT COURT,
Northern dist. of California.

SAN FRANCISCO, *Sept.* 3, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Jacinto Rodriguez, a witness produced on behalf of the claimant in case No. 62, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California in case No. 37 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Jno. B. Romera, a sworn interpreter.

Present: U. S. dist. atty., per A. Glassel, asst., and E. Stanly, for claimant.

Question by claimant's counsel. Are you acquainted with the Rancho San Luis Gonzaga?

Answer. I am. I have examined the original papers in the archives in this case. I am personally acquainted with the locality of the rancho.

Question. Could you, guided by the calls of the grant, or any one else acquainted with the country in question, easily locate this claim?

Answer. Yes.

Question 2d. Are the natural objects mentioned in the grant well known?

Answer. Yes; there are natural objects, and well known. The description is as plain as could be given.

Question. Do you know where the first settlement was made, and when?

Answer. I cannot tell to a certainty the month when it was; but I know that possession was taken as soon as the situation of the country and hostility of the Indians permitted. After possession was taken, it was occupied by cattle, houses built, and cultivation carried on.

Question. How do you know these facts?

Answer. At that time the Indians attacked or came to the rancho—even those nearest the towns; and as a soldier I pursued the Indians, and knew the rancho long before it was ever granted to any one. After the rancho was granted, there was a white man killed there by the Indians. I have no interest in this claim.

JACINTO RODRIGUEZ.

Sworn to before me this 3rd Sept., 1855.

J. A. MONROE, *U. S. Com'r.*

UNITED STATES DISTRICT COURT,
Northern district of California.

SAN FRANCISCO, *Sept.* 3*d*, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Benito Diez, a witness produced on behalf of the claimant in case No. 62, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 37 on the docket of the said board of commissioners, and was duly sworn and testified as follows; his evidence being interpreted by Jno. B. Romera, a sworn interpreter.

Present. A. Glassel, on behalf of the U. S., and Edward Stanly for claimant.

Question by E. Stanley. Are you acquainted with the Rancho San Luis Gonzaga?

Question. Have you examined the original papers in the archives, and are you personally acquainted with the localities mentioned?

Answer. I have, and am.

Question. Could you, or any one else acquainted with the county, guided by the calls of the grant, have any difficulty in locating the claim?

Answer. None whatever. I, or any one acquainted with the country, could easily locate it.

The natural objects mentioned in the claim are notoriously known,

and the description is as accurate as could be given without a survey. I don't know when first settlement was made, but know it was settled in 1847, and I know as soon as the Indians withdrew it was settled; it was on the road of the Indians; it was the land that the Indians passed most frequently in coming from the Tulares.

Question. How do you know these facts?

Answer. I have been a miner, and have lived in that neighborhood; am 42 years of age, and have been a military man. I have no interest in this claim.

BENITO DIAZ.

Endorsed: Filed Sept. 3d, 1855.

W. H. CHEVERS,
Deputy.

Stipulations to correct clerical errors in transcript, and to admit translations of certain documents.

JUAN PEREZ PACHECO
vs.
THE UNITED STATES. } No. 62.

It appearing from the certificate of the U. S. Surveyor General that a clerical error exists in the 26th page of the transcript in this case, by the substitution of the name of "*Menega*" as the attorney, instead of that of "Abrego," I consent to the necessary correction being made.

The transcript not containing translations of the power of attorney from Revera to Abrego; of Abrego's assignment to Pacheco, and of Mejia's assignment to Pacheco, as therein copied in Spanish; I also consent that the papers herewith, marked A. Glassel, may be received, as being translations of said documents.

A. GLASSELL,
Assist. U. S. Dist. Att'y.

Endorsed: Filed April 18th, 1856.

W. H. CHEVERS,
Deputy.

Certificate of U. S. Sur. General as to clerical error in the transcript marked "A. Glassel."

U. S. SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, 16 *April*, 1856.

Having, at the request of the counsel for the claimant, carefully compared the copy of the transfer from José Abrego, attorney, &c., to Francisco Pacheco, acknowledged at Monterey on the 7th June, 1851, as contained upon folios 26 and 27 of the transcript from the late Board of Land Commissioners, in the case of Juan Perez Pacheco, No. 37 on the docket of said commissioners, with the original of said paper transferred to this office by the said commissioners, and now on file therein, I find that by a clerical error the name of "*Monego*," in the

12th ( ) line from the foot of the 26th ( ) page, has been erroneously substituted for that of "Abrego," as it is in said original.

JOHN C. HAYS,
U. S. Sur. Genl. for California.

Endorsed: Filed April 18th, 1856.

W. H. CHEVERS,
Deputy.

Translation of Transfer by J. M. Mejia of his interest to Juan Perez Pacheco, 7th Nov., 1843, *marked "A. Glassel."—Page* 23, ( ) *Mejia to J. P. Pacheco.*

Translation of Assignment from J. M. Mejia to Juan Perez Pacheco, 7th Nov., 1843.

Original copied on page 23 ( ) of transcript.

[SEAL.]

By these presents be it proved that the share that belongs to me, conjointly with Juan Perez Pacheco, of the land called "San Luis Gonzaga," I cede it absolutely to the said Señor without considering myself as retaining any right to it, the possession of which will be valid at all times, and I do not consider myself as having any right to claim it, renouncing the laws in my favor, those of the general exclusion, and giving to this document the same force and validity as if it was a judicial instrument.

Given at Monterey on the 7th of November, 1843.

J. MARIA MEJIA.

JQS. SALVADOR MANEO,
JOSE DE AMISTO.

Endorsed: Filed April 18, 1856.

W. H. CHEVERS,
Deputy.

Translation of the Power of Attorney from F. J. Rivero to José Abrego, and of Abrego's conveyance to Francisco Pacheco, marked "A. Glassel."—Page 24, *Rivero to Abrego—Power of Att'y.*

Translation of Power of Attorney from F. J. Rivero to José Abrego.
Original, page 24 of transcript.

In the city of Mexico, on the 20th day of February, 1851, before me, a public notary, and witnesses, appeared Don Francisco José Rivero, of this city, of upwards of twenty-five years of age, whom I certify I know, and he said:

That towards the end of December, of the year 1841, Señor Don Juan Bautista Alvarado gave in fee simple to the declarer the rancho known by the name of San Luis Gonzaga, situated in Upper California, containing eleven sitios de ganado mayor, which must be recorded in the secretary's office of the government, of that part which belonged

to the republic, in the respective book and mentioned year; that deeming it convenient to sell the said rancho, and having to perform the contract in case of conveying it into effect in California itself, by these presents, and in the most sufficient form that may be required by law, the said mentioned Señor Rivero gives all his power sufficient required by right or law, and that may be necessary, to Juan José Abrégo, a resident of Monterey, in Upper California; that in representation of the declarer hereof, and of his rights and actions, he may sell the said rancho, receiving its amount, and making the corresponding deeds of conveyance, declaring in it in favor of the purchaser, the said land to be free of all lien or hypothecation on the part of the declarer, and binding him in the instrument that may be granted to the eviction and guaranty of said sale, and inserting in the said deed all the clauses and requisites customary in such cases considering, as hereby expressed, as may as well be conducive with incidencies, dependencies, and connections for frank and general administration, with power to swear, to use, to substitute, and to revoke substitutes, and to appoint others anew, that he does sanction in due form. And to the firm keeping and validity of all that is herein expressed, declarer binds all his present and future property, and gives power to the judges, justices, and tribunals of the nation, to compel him to comply with all he has said, as if it was sentence passed by authority in res adjudicata, and consented, and by such he receives it, renouncing the privileges of residence, laws in his favor and defence, which would prohibit his general renunciation. And he signed it in the presence of the witnesses, Don Juan Molina, Don Casanero Fernandez, and Don Manuel Hermanez, of this city, to which I attest.

FRANCISCO JOSE RIVERO.
DANIEL MENDEZ,
National and Public Notary.

It was extracted of its *crating* that is recorded in the protocol under my charge, to which I refer myself; and it is written on the present sheet of the second stamp corrected for the present year, the instrumental witnesses witnessing its extraction and correction.

Mexico, February 20th, 1851.

DANIEL MENDEZ,
National and Public Notary.

Abrego to F. Pacheco.—Sale.

Translation of Assignment from Abrego to Francisco Pacheco, page 26 of transcript.

At the port of Monterey, in the State of California, on the 7th day of June, 1851, appeared before me, Preston R. Woodside, recorder of the county of Monterey, Don José Abrego, a resident of this place, and he says, that being the attorney of Don Francisco Rivero, as is proved by the annexed power of attorney, that he sells and makes a solemn sale in the name of the said Francisco Rivero, of the

right and action which he could have in the rancho of San Luis Gonzaga, lying in this county, and containing eleven sitios de ganado mayor, which was granted to him in the year 1840 by the Governor Juan Bautista Alvarado, as it must be shown with the archives of the Government, to Don Francisco Pacheco, a resident of this place, for the sum of twelve hundred dollars, which he has received to his full satisfaction, declaring that the said land has not been sold or transferred on the part of the said Francisco Rivero, and, for due proof, he signs in the presence of witnesses.

JOSE ABREGO.

M. DE TARBOIS,
JAMES STOKES.

The acknowledgments of both of above papers in English following the originals in the transcript.

Endorsed: Filed 18th, 1856.

W. H. CHEVERS,
Deputy.

Opinion of the Court was delivered by his honor Ogden Hoffman, jr., Judge.

THE UNITED STATES
ads.
JUAN PEREZ PACHECO.

The claim in this case is founded on a grant made by Governor Micheltereno on the 4th November, 1843. It appears from the expediente, a copy of which is contained in the transcript, that one Mejia petitioned the governor on the 26th September, 1843, for a grant of a tract of land by me, at the base of the hillocks which penetrate into the valley of San Joaquin, with the same number of sitios as belonged to Francisco Rivero, to whom the government of the Department had granted, but who had neglected to occupy it during two years from the date of his grant.

The governor made the usual reference of this petition to the prefect and the secretary for information. Latter officer reported that the land had been granted to Francisco Rivero since 1841, but that inasmuch as the latter had failed to comply with condition requiring him to build a house within one year, which should be inhabited, he (the secretary) was of opinion that he had forfeited his right to the land, and that it might be granted to Mejia, the petitioner.

On the 3d of Oct., 1843, the governor ordered the title to issue in conformity with this report.

In the decree of concession, which was made on the 4th of the ensuing month, the governor recites that, in consideration of the long period which has elapsed "without the land being occupied by Don Francisco Rivero, and without any news of the whereabouts of said individual; and, inasmuch as the interested parties have the means of improving and

occupying the land," he declares José M. Mejia and Juan Perez Pacheco owners of the tract known as San Luis Gonzaga, bounded by the rancho of Don Francisco Pacheco, by the bath called Padre Arroyo's bath, by the river and the wild Indian country.

In the 3d condition the land is declared to be of the extent of eleven square leagues.

The original document delivered to the parties is produced, and the genuineness of the signatures of the governor and secretary duly proved. It is in entire conformity with the decree of concession found in the expediente.

By the testimony of José Abrego, it appears that for eight years previous to 1853, the rancho was in the possession and occupation of the petitioner; that he constructed and occupied several *several* houses by himself and those in his employment; that he also built several large corrals, and cultivated portions of the land during all that period.

By the depositions of Rodriguez and Diaz, taken in this court, it is shown that the land was occupied as soon as the hostility of the Indians permitted; that the rancho was peculiarly exposed to their depredations, being on the route most frequented by them in coming from the Tulares.

The witness, Diaz, states that he is unable to specify the precise time when the first settlement was effected, but knows that the land was occupied in 1847.

It is obvious that there is no proof that the condition, requiring a house to be built within a year, was ever complied with by the grantees; and, for the want of this, the board was of opinion that the claim should be rejected—more particularly as the claimants had obtained their grant on a denouncement, founded on the neglect of the previous grantee to perform the very same condition which they failed themselves to fulfil.

The proofs taken in this court show, however, an excuse for the non-settlement which was not offered to the board; and it is very doubtful whether in this case, even had the land been denounced to the Mexican government, it would have been re-granted. It is worthy of observation, that in the decree of concession, the governor states not only that Rivero, the previous grantee, had failed to occupy the land within the year, but that the period of two years elapsed "without any news of the whereabouts of that individual." It may, therefore, be reasonably inferred that the land was forfeited not merely in obedience to a rigorous rule which imposed that consequence as a penalty for the non-performance of the conditions, but because the governor was satisfied the grantee had abandoned his grant, and had at all events failed to show either an effort to fulfil, or an excuse for not doing so.

But whatever action the governor might have taken, had this land been denounced as against the present claimants, no such proceeding was had; and the proof shows that a settlement was effected within less than two years from the date of the grant, and during the continuance of the former government.

The principle laid down in the case of the United States vs. Fremont applies, therefore, with great force to this case; for there was not only no second denouncement, but the conditions were fully complied with during the existence of the Mexican authority; and the proofs show not only that there was no unreasonable delay or want of effort, but they absolutely repel the idea that the party had abandoned his claim before the Mexican power ceased to exist, and is now seeking to resume it from its enhanced value. It may also be observed, that there is no reason to suppose that, under the Mexican laws, land could in any case be denounced after the conditions had been fulfilled, whether within or after the time limited in the grants.

The remaining objection to this claim which is noticed in the opinion of the board is, that the grant is vague, general, and has never been located by competent authority. But by the testimony taken in this court, it appears that the natural objects mentioned in the grant are notoriously known, and the description is as accurate as could be given without a survey.

On referring to the grant the boundaries seem to be indicated with some precision. The rancho of Francisco Pacheco, the bath of Padre Arroyo, and the river (San Joaquin) are all mentioned; and there seems no reason to doubt the statement of the witnesses, that by means of these calls the land can without difficulty be located. No other objections to this grant are stated in the opinion of the board, nor are any others raised on the part of the United States.

The case having been submitted *with* argument or suggestion on the part of the appellees, a decree of confirmation must therefore be entered.

Decree of Confirmation.

In the District Court of the United States for the northern district of California.

JUAN PEREZ PACHECO, appellant,
vs.
THE UNITED STATES, appellees. } Decree of Confirmation.

This case coming on this day to be heard upon the transcript of the proceedings and decision of the board of land commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case, and the pleadings filed in this court, and counsel having been heard on the part of the United States and for the claimant:

In consideration of all which the court is of opinion, that there is error in the decision of the said board, and that the same should be and is hereby reversed.

And this court doth order, adjudge, and decree, that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed.